

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

C.M.A. No.4875 of 2004

JUDGMENT:

This appeal by the injured claimant is directed against the award dated 02.09.2004 in OP 884 of 2000 passed by the learned Chairman, Motor Accidents Claims Tribunal-cum-District Judge, Nizamabad.

2. I have heard the submissions of the learned counsel for the appellant/claimant ('the claimant', for brevity) and the learned counsel for the second respondent/insurance company ('the second respondent', for brevity). This appeal against the 1st respondent/owner-cum-insured was dismissed for default. Even though the appeal is dismissed against the owner-cum-insured of the vehicle, the statutory liability of the insurance company survives for consideration and there is no need for the presence of the owner of the vehicle to decide the question of statutory liability of the insurance company at the appellate stage in the cases wherever the Tribunal had recorded a finding that the accident had taken place due to the rash and/or negligent driving of the driver of the motor vehicle and if the said finding is not challenged either by the owner of the vehicle or by the insurance company in view of a judgment of a Division Bench of this Court in **Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma and others.**

3. The facts leading to the filing of the present appeal by the claimant, in brief, are as follows:

The claimant who had sustained injuries in a motor vehicle accident that took place on 08.10.1999 had claimed a compensation of Rs.1,20,000/-. The 1st respondent, owner-cum-insured, had remained *ex parte* before the Tribunal. The 2nd respondent/insurance company had resisted the claim on various grounds. During the course of trial before the Tribunal, the claimant and a doctor were examined as

PWs 1 and 2 and exhibits A1 to A7, X1, X2, C1 and C2 were marked on the side of the claimant. No oral and documentary evidence was adduced on the side of the 2nd respondent. The Tribunal while holding that the pleaded accident resulting in injuries to the claimant had occurred due to the rash and negligent driving of the lorry bearing Registration No. MH-26/7230, had awarded a compensation of Rs.46,500/- payable with interest at 9% per annum simple from the date of the petition till the date of payment or realization, besides proportionate costs and had also held that both the respondents, i.e., the insured and insurer are jointly and severally liable to pay the same to the claimant and had accordingly directed them to deposit the same within two months from the date of the award. Not having been satisfied with the quantum of compensation awarded, the claimant had preferred this appeal. It is stated that no appeal or cross objections are filed by the 2nd respondent-insurer.

4. (a) The learned counsel for the claimant would contend as follows: 'The Tribunal had failed to consider that the claimant had sustained grievous injuries and was hospitalized for a considerable length of time and that she had suffered permanent disability to the extent of 45% in spite of receiving treatment and that therefore, the claimant who was hale and healthy prior to the accident and who used to work as a stone cutter and used to earn Rs.20,000/- per month had become permanently disabled and lost her earning capacity and future earnings. The Tribunal had failed to award adequate compensation towards medical expenses, transport, attendant, hospital, extra nourishment and incidental expenses incurred by the claimant. The Tribunal erroneously considered that the monthly income of the claimant is Rs.1,500/- and had awarded a meagre compensation. The Tribunal ought to have awarded more compensation than claimed by the claimant as it is the duty of the Tribunal to award just and fair compensation having regard to the facts and evidence on record. The appeal may be allowed and just and fair compensation to which the claimant is entitled to under facts and in law may be awarded.' On the other hand, the learned counsel for the 2nd respondent would contend that the claimant had only suffered simple injuries and the doctor who is a stock witness had not treated her and that the evidence of the doctor who had not treated PW1 is of no avail and that the Tribunal had awarded compensation towards loss of earnings for three months and towards permanent disability besides medical expenses, even though there is no adequate proof and therefore, the award of Rs.46,500/- which is

on the higher side cannot be said to be not just and fair. She had finally urged that the appeal is devoid of merit and is liable to be dismissed.

5. The points that arise for determination in this appeal are:

Whether the compensation awarded by the Tribunal is not just and fair in the facts and circumstances urged by the claimant? And, if so, what shall be the just and fair compensation to be awarded to the claimant in this appeal?

6. POINTS:

6. (a) As regards the injuries and other allied aspects, the case of the claimant is this: 'In the accident the claimant had sustained a head injury resulting in fracture of skull besides an injury to her left eye. She had lost her memory power. Her eye sight was affected. Her face is disfigured. Her right hand fingers were crushed. She had also received injuries on other parts of her body. She was shifted to Government Hospital, Nizamabad and had received inpatient treatment from a team of doctors. She was taking treatment from private hospitals even as on the date of filing of the application. She had incurred an expenditure of Rs.60,000/- on her treatment and medicines etcetera. She was unable to move from bed. She cannot walk and work. She suffered permanent disability on account of her said condition and her earning capacity was affected. She lost her earnings and amenities of life. She became a dependant on her family members. Her life became dark.'

6. (b) On the other hand, the case of the 2nd respondent on this particular aspect is in the nature of general and specific denial and the 2nd respondent had put the claimant to strict proof of her pleaded case in this regard and also the claimant's entitlement to the compensation.

6. (c) PW1 while deposing in line with her pleaded case, had further deposed as under on this relevant aspect: 'I received inpatient treatment for one month. Though I was referred to Hyderabad Hospital, I had taken treatment for two months from a Neuro Surgeon of Pragati Hospital, Nizamabad. Two operations were performed to treat the head injury. I had incurred an expenditure of more than Rs.1,00,000/-.' While speaking about injuries, she had stated that she had sustained injuries on her left hand, left leg and also on the back and that she had lost three teeth. In her evidence, exhibits A2-the copy of her wound certificate, A3-Discharge Card issued

by the Government Hospital, A4-a bunch of three prescriptions issued by Pragati Hospital, A5-Registration Card issued by the said Hospital, A6-a bunch of eight medical bills, X1-case sheet, X2-a bunch of three X ray films, C1-disability certificate and C2-two X ray films were marked. She had admitted in her cross-examination that she had filed only bills for an amount of Rs.600/-. She had denied the suggestions that exhibit C1 certificate is fabricated and that she did not suffer any disability and that she is attending to her work as usual and is earning Rs.5,000/- per week and that she did not sustain any injury to her left eye.

6. (d) Thus, I have carefully examined the evidence brought on record. The medical record namely exhibit A2-wound certificate and exhibit X1, the case sheet, on a perusal would show that the claimant had sustained the following injuries: (i) fracture of zygomatic arch-left side of skull; (ii) fracture of 3rd and 4th ribs on the left side; (iii) lacerated injury on left shoulder (iv) lacerated injury on forehead- left side bone exposed - frontal fractured; (v) lacerated wound on scalp and (vi) lacerated injury on forehead. She was aged 45 years at the time of the accident as per her case. However, as per her medical records her age was 50 years. She was admitted into the Government Hospital on 08.10.1999 with head injury and was discharged on 21.10.1999 as per exhibit A3, discharge card. Exhibit A5 shows that she had received treatment from Pragati Hospital. X ray films also support her case in respect of fracture injuries. PW2 also deposed that he had noticed that PW1 had suffered- injury over left shoulder, injury over forehead (left side-bone exposed)- frontal fracture, lacerated injury on scalp besides wounds on forehead etcetera and that he had advised X rays to be taken. He had further deposed that the claimant had sustained fracture of 3rd and 4th ribs on the left side. The evidence on record does not support her evidence that she had sustained injuries on left hand, left leg and back and that she had lost her teeth. Therefore, the evidence on record is sufficient to safely conclude that PW1 had sustained two major fracture injuries besides injuries to scalp/fore head etcetera in the pleaded accident. Even simple injuries cause painful experience to the victim and take a minimum of two to three weeks' time for complete healing. Major injuries like fractures take 4 to 6 weeks or 6 to 8 weeks time for total healing depending upon the nature of the fracture and other factors. A further time of one or two months is generally required for physiotherapy and getting normal movements of the limb. The shock, pain and suffering at the time of accident, pain, discomfort and inconvenience during the period of treatment,

hospitalisation, bed rest and physiotherapy can be visualised taking into consideration the day to day human experience. Therefore, a sum of Rs.60,000/- is awarded as compensation under the heads 'injury', 'shock', 'pain' and 'suffering'.

6. (e) As regards hospital, medical, transport, attendant, extra nourishment and other expenses, it is to be noted that the claimant had deposed that she had underwent two operations in the hospital, but the evidence of the doctor and the entries in the case record do not support her said statement. She had also deposed that she had spent a sum of more than Rs.1,00,000/- on her treatment, but no record in support of the said claim is filed. It is common knowledge that even patients receiving treatment in Government Hospital also incur expenditure on transport, extra nourishment, medicines purchased from outside, attendant, besides other incidental charges. During the period of hospitalisation and bed rest, a person might have attended upon the claimant cannot be disputed. In a decision in **Managing Director, APSRTC v. Kathavath Gopal and another**, this Court held that compensation towards expenditure incurred on extra nourishment and transport cannot be denied even though treatment was given in Government Hospital and one cannot expect positive evidence proving actual expenditure and hence some reasonable hypothesis cannot be ruled out. In the facts and circumstances of the case, a sum of Rs.10,000/- is awarded as compensation under the heads 'hospital, medical, extra nourishment, attendant's, transport and incidental charges'.

6. (f) As regards the claim under 'loss of earnings (past)', according to the claimant she used to work as stone cutter and earn Rs.20,000/- per month. However, she did not prove her earnings at such rate by examining any independent witness like the quarry owner or her employer. Considering her age, the Tribunal determined her monthly earnings at Rs.1,500/-. Also considering that she might have been out of work for a period of three months, a sum of Rs.4,500/- was awarded. However, considering the nature of injuries, it is reasonable to accept that she was out of work for six months as she is a hardworking labourer and as pink of health is required for attending to labour work. Accordingly, Rs.9,000/- is awarded as compensation under the head 'loss of earnings (past)'.

6. (g) Coming to the 'loss of earnings (present and future)', the case of the claimant as brought out on record is that after the accident she is unable to do any work and

that she is getting reeling sensation and that she had also received treatment from Neuro Surgeon for two months. PW2, the doctor, had certified her disability at 45%. He deposed that the fractures of ribs and fracture of zygomatic arch left of PW1 are mal-united and therefore, he had assessed the disability at 45%. He had further stated that PW1 cannot do any hard works. He had admitted that he had not treated PW1 in the Government Hospital. He did not state about any other disability or about her incapacity to work as a labourer if not as a stone cutter. In **Sannala Bhaskar Reddy v. M.Sreenivasulu and another**, this Court considered the question - Whether the disability of the injured can be determined on the basis of a certificate issued by a Doctor who did not treat the injured immediately after the accident. In the cited case, exhibit A5 was the disability certificate and PW1 was the author of the said certificate. This Court held that the certificate will not have any evidentiary value in view of the ratio in the decision of the Supreme Court in the decision in **Rajesh Kumar v. Yudhvir Singh's** case. Ultimately, this court held in that case that the disability may be taken at 25% though the disability was assessed and certified in the certificate at 60%. In the case on hand, PW2 supported the case of PW1 in his evidence. His evidence, which is relevant, is already adverted to supra. Though the learned counsel for the insurer had contended that the said doctor is not a credible witness and is a stock witness for claimants in motor accident claims in that locality, no suggestions on that line were given to the Doctor when he was cross examined on behalf of the insurer. When it was suggested to him that he had certified the percentage of the disability on higher side, he had denied the said suggestion. Having regard to the facts and circumstances of the case and the evidence on record, the functional disability is determined at 20%. Now, the compensation under the relevant head is to be arrived at. The age of the claimant at the time of accident is 50 years as per medical record/case sheet. Therefore, the appropriate multiplier as per the ratio in **Sarala Verma v. Delhi Transport Corporation** is '13' (thirteen). The monthly income of the claimant was already determined at Rs.1,500/-. Since the claimant is aged above 50 years, no addition to the actual income of the claimant towards future prospects is to be made. Accordingly, the annual income of the claimant works out to Rs.18,000/- (Rs.1,500/-X 12). The compensation awardable in case of 100% functional disability would be Rs.18,000/- x 13 = Rs.2,34,000/-. Since the functional disability is determined at 20%, the said sum, if scaled down comes to Rs.23,400/-. The said sum is rounded off to Rs.23,500/- and is accordingly awarded under the head 'loss of earnings (present and future)'.

6. (h) Coming to the claims under the group of heads ‘loss of prospects of life, loss of amenities of life, loss of enjoyment of life, loss of opportunities of life (economical, political and social), loss of pleasures of life, loss of expectation of life and social disability’ and other group of heads, what is to be noted is that the functional disability is determined at 20%. The doctor did not specifically testify about any disabilities like inability to walk, breathe, and see etcetera. Therefore, in the well considered view of this court, the claimant is entitled to Rs.10,000/- as compensation under the aforementioned group of heads.

Accordingly, the claimant is entitled to the following compensation amounts:

Sl.No.	Head of compensation	Amount(in Rs.)
(1)	Injury, shock, pain and suffering	60,000-00
(2)	Hospital, medical, extra nourishment, attendant's, transport and incidental charges	10,000-00
(3)	Loss of earnings (past)	9,000-00
(4)	Loss of earnings(present and future)	23,500-00
(5)	Loss of prospects of life, loss of amenities of life, loss of enjoyment of life, loss of opportunities of life (economic, political and social), loss of pleasures of life and loss of expectation of life and social disability	10,000-00
Total		1,12,500-00

(Rupees One Lakh Twelve Thousand and Five Hundred only)

6. (i) In the facts and circumstances of the case, the claimant is not entitled to any other compensation amounts. Thus, as per the determination supra, the just and fair compensation to which the claimant is entitled to is Rs.1,12,500/-. The said compensation is accordingly awarded. The rest of the claim is dismissed. The point is accordingly answered.

7. Coming to the rate of interest on the enhanced portion of the compensation, it is just and fair to award interest at the rate of 7.5% per annum simple on the said enhanced compensation amount.

8. In the result, the appeal is allowed, in part, with proportionate costs awarding a total compensation of Rs.1,12,500/- (Rupees One Lakh Twelve Thousand and Five Hundred only). On the compensation already awarded, the trial Court granted interest at 9% per annum simple. Having regard to the facts and circumstances, the 2nd respondent-insurance company is directed to deposit the enhanced portion of compensation i.e., Rs.66,000/- with interest at 7.5% per annum simple from the date of the original petition till the payment and also proportionate costs before the Tribunal within two months from the date of the receipt of a copy of this judgment. The already awarded compensation or any portion thereof, if not already paid or deposited as per the award of the Tribunal, the same may also be deposited accordingly. In case of deposit of the said sums before the Tribunal, the claimant is entitled to receive the same without furnishing any security.

Miscellaneous petitions, if any, pending in this appeal shall stand closed.

M. SEETHARAMA MURTI, J

20th March, 2015

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